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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 548

HERBERT L. ELY, INDIVIDUALLY AND AS CHAIRMAN OF THE DEMOCRATIC PARTY OF ARIZONA, APPELLANT,

v.

GARY PETER KLAHR, JACK WILLIAMS, GOVERNOR OF THE STATE OF ARIZONA, AND WESLEY BOLIN, SECRETARY OF STATE OF ARIZONA, APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA

JURISDICTIONAL STATEMENT

HERBERT L. ELY,
in propria persona,
904 Arizona Title Bldg.
Phoenix, Arizona

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA

JURISDICTIONAL STATEMENT

THE OPINIONS BELOW

The Judgment and Decree of the United States District Court for the District of Arizona holding that both houses of the Arizona Legislature were unconstitutionally apportioned was filed on February 2, 1966 and was supplemented by a First Supplemental Decree filed on March 4, 1966, and by Second Supplemental Decree filed on December 5, 1966. These opinions appear at 250 F.Supp. 537, 254 F.Supp. 997 and 289 F.Supp. 827. Unpublished opinions were filed on July 22, 1969 and May 19, 1970, and these are attached to this Statement as Appendix A and Appendix B.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

On January 22, 1970 the defendant Jack Williams, Governor of Arizona, approved Chapter 1, House Bill No. 1, 29th Arizona Legislature, First Special Session, which redistricted both houses of the Arizona Legislature essentially on the basis of voter registration rather than population. The date of this enactment was almost six years after suit was originally filed, during all of which time Arizona has been living with a substantially malapportioned Legislature. Since the District Court had had continuing jurisdiction over Arizona's legislative apportionment problem since the suit was filed, the Attorney General filed this new enactment with the Court on February 16, 1970 and requested that it be approved. The appellant challenged the statute on the grounds that it violated the Fourteenth Amendment to the United States Constitution. After a hearing on this plan, and on an alternative plan based on population rather than voter registration which was proposed by appellant, the Court held that House Bill No. 1 was

unconstitutional, but refused to enjoin its enforcement. Its decree, entered on May 19, 1970, was the denial of an injunction in a proceeding required to be determined by a district court of three judges.

Jurisdiction of the appeal is conferred on this Court by Title 28 U.S.C.A., Section 1253.

Cases believed to sustain the jurisdiction of this Court are:

Moore v. Ogilvie, 394 U.S. 814 (1969)

Kesler v. Department of Public Safety, Financial Responsibility Division, State of Utah, 369 U.S. 153 (1962)

Florida Lime & Avocado Growers, Inc. v. Jacobsen, 362 U.S. 73 (1960)

Query v. United Ctates, 316 U.S. 486 (1942)

Interstate Busses Corporation v. Blodgett, 276 U.S. 245 (1928)

Palmetto Fire Insurance Co. v. Connecticut, 272 U.S. 295 (1926)

The Arizona statute which is claimed to be unconstitutional is Chapter 1, House Bill No. 1, 29th Legislature, First Special Session. A copy of this statute is attached to this Statement as Appendix C.

QUESTION PRESENTED BY THE APPEAL

The following question is presented by this appeal: Was it error for the United States District Court to refuse to enjoin the enforcement of an Arizona legislative reapportionment plan in which the legislative districts have approximately equal numbers of registered voters but grossly unequal numbers of people, on the grounds that such plan decimates the voting strength of the poor, the urban ethnic minorities, the

agricultural farm workers, and the American Indian, and denies them the equal protection of the laws.

STATEMENT OF THE CASE

Gary Peter Klahr filed a suit against the Governor and the Secretary of State of Arizona in the United States District Court on April 27, 1964, claiming that his rights under the Fourteenth Amendment were being abridged by Arizona laws governing the apportionment of the State Legislature. The suit also attacked the inequality of the Congressional Districts but that element of the case is not before this Court.

At the time this suit was filed the apportionment of the Arizona Senate and House of Representatives was determined by Art. 4, Pt. 2, § 1, of the Arizona Constitution. This provided that the Senate shall consist of 28 members, 2 from each of the State's fourteen Counties. It also provided for a House of Representatives comprised of 80 members apportioned every four years among the Counties in proportion to the number of votes cast in such Counties at the last prior gubernatorial election, except that each County would be entitled to not less than one representative. According to the 1960 census the population of the Counties ranged from 663,510 to 7,736. There have traditionally been great variations in the percentage of people in each County that vote, due largely to the fact that a few Counties contain large numbers of American Indians who do not participate in the electoral process.

The First Regular Session of the Twenty-Seventh Legislature that sat in 1965 did not enact a reapportionment plan and, after its adjournment, the Governor called a Special Session to sit during the summer of 1965 to deal exclusively with this problem. On May

18, 1965, the District Court, by minute entry, ordered that the pretrial hearing and trial be deferred until after the conclusion of the Special Session so that the Legislature would have a fair opportunity to right an obvious wrong. This Special Session yielded Senate Bill 11, which provided that eleven of the least populous Counties be allotted one Senate seat each and that multiple seats be allotted to the three most populous Counties. It did not undertake to reapportion the House.

After a trial commencing on November 18, 1965, the District Court held, by its decree filed on February 2, 1966: (1) that Senate Bill 11 was unconstitutional since the populations of Counties that were assigned one Senate seat ranged from 55,039 to 7,736; and (2) that Art. 4, Pt. 2, § 1, of the Arizona Constitution unconstitutionally apportioned the House of Representatives, citing as an example of malapportionment that a County with a population of 30,438 was entitled to one Representative whereas another County with a population of 28,912 was entitled to three Representatives. By that decree, together with a supplemental decree filed on March 4, 1966, the Court imposed on the State its own "temporary and provisional" reapportionment plan which created 30 legislative districts, each district to be represented by one Senator and two Representatives. Twenty-one of these districts, which were within the two most populated Counties, Maricopa and Pima, were apportioned on the basis of voter registration rather than population. The other nine districts were outlying Counties or groupings of two or three such Counties.

In June 1967, the Legislature, in its second effort to reapportion itself, enacted Chapter 1, 28th Legislature,

First Special Session. This measure was put to the voters in November, 1968, and, having received the support of a majority of those voting upon it, it was proclaimed into law by the Governor on January 17, 1969. It was upon the enactment of this statute by the Legislature that Richard Duffield, appellant's predecessor as Chairman of the Democratic Party of Arizona, petitioned for leave to intervene for the purpose of assuring that the measure would be vigorously challenged. This plan again apportioned legislative districts on the basis of voter registration and permitted a deviation from the norm of as much as 40% until 1971 and a deviation of as much as 16% thereafter. After a hearing commencing on January 17, 1969 the District Court, by Decision filed on July 22, 1969, held that these deviations were excessive and had not been justified. In its opinion it concluded, "there is ample time prior to the date that the machinery for conducting the 1970 elections must be set up, for the Arizona Legislature to meet its obligations."

The most recent effort by the Legislature to reapportion itself was Chapter 1, House Bill No. 1, 29th Legislature, First Special Session, that was approved by the Governor on January 22, 1970, and filed with the District Court on February 16, 1970. This plan, like that imposed by the Court, provides for 30 legislative districts, each to be represented by one senator and two representatives. Each district is a grouping of traditional political precincts. Since it is not known what the population of a precinct is, ,it is assumed to be that portion of its county's 1960 population which the voter registration in the precinct bears to the total voter registration of the county. Appellant's objection to this plan was that this gave rise to wide population deviations among the districts and these deviations

enhanced the political influence of the affluent and decimated the influence of the poor and members of the racial minorities. As an example, appellant showed (and it was not disputed) that in an affluent Phoenix district there were about 35,000 people and in the Phoenix district comprised primarily of negroes and Mexican-Americans there were more than 70,000 people. Appellant presented his own plan to the District Court in which the districts were comprised of groupings of census enumeration divisions and tracts using 1968 population projection figures prepared by the Arizona Employment Security Commission working in cooperation with the United States Census Bureau. This was the first plan presented to the Court which did not use voter registration as a significant factor in estimating population. After a hearing commencing on April 16, 1970, the Court, by its decree filed on May 19, 1970, held the new legislative plan to be unconstitutional but nevertheless approved its use. This decree further held that any party could petition for further relief on or after November 1, 1971, if the Legislature has not by then enacted a constitutionally valid plan.

THE FEDERAL QUESTION PRESENTED IS SUBSTANTIAL

The question presented in this appeal is indeed substantial and requires plenary consideration, with briefs on the merits and oral argument, for its resolution. Deprivations of voting rights in Arizona elections are far more grevious violations of the Equal Protection Clause than were those dealt with in *Kirkpatrick v. Preisler,* 394 U.S. 526 (1969) and *Wells v. Rockefeller,* 394 U.S. 542 (1969). The legislative apportionment plan now in effect, based on voter registration, produces a distribution of legislators substantially dif-

ferent from that which would result from the use of a population plan. cf. *Burns v. Richardson,* 384 U.S. 73 (1966) And the people being deprived of equal voting rights are not a random cross-section of the population. They are rather the very people whose only capacity to exert peaceful and constructive influence in government is through the ballot-box. It is the Negro and Mexican-American district of Phoenix that includes more than 70,000 people, while a district comprised of their comfortable white neighbors on the other side of the tracks includes only about 35,000 people. And the American Indian population of Arizona suffers its traditional abuse under the current plan. The notorious fact is that Indians, who were excluded from participatory democracy before 1924 by being denied rights of citizenship, have in many areas not yet been brought into the political mainstream. This is particularly true of numerous Indians residing in a vast area of tribal lands in northeastern Arizona, included within Apache, Navajo and Coconino Counties. In fact the Bureau of the Census officially determined, pursuant to Section 4 of the Voting Rights Act of 1965 (79 Stat. 438, 42 U.S.C.A. § 1793) that less than 50% of the residents of those three Counties voted in the presidential election in 1964. 30 Fed. Reg. 9897, 14505; *Apache County v. United States,* 256 F.Supp. 903 (D. of C. 1966)

The sad fact is then that the substantial inequality of voting rights among Arizona citizens has ugly racial overtones. This is a wrong that should be corrected by the Court at the earliest time without waiting and waiting for the Legislature finally to do the right thing.

THE DISTRICT COURT ABUSED ITS DISCRETION IN REFUSING TO ENJOIN THE OPERATION OF HOUSE BILL 1

The District Court has been nothing if not patient. Faced with a grossly malapportioned Legislature in April, 1964, when this suit was filed, the District Court on June 25, 1964, ordered all proceedings stayed until 30 days after the adjournment of the 1965 Regular Session of the Legislature. When that Session was over, and on May 18, 1965, the Court ordered a deferral of the pretrial and trial until after a Special Session that followed the Regular Session. This Special Session yielded only Senate Bill 11 which, coming after *Wesberry v. Sanders,* 376 U.S. 1 (1964), *Reynolds v. Sims,* 377 U.S. 533 (1964) and *Davis v. Mann,* 377 U.S. 678 (1964), was downright irresponsible.

The citizens of Arizona have since then had to live with the plan defined in the District Court decrees of February 2 and March 4, 1966, which, all parties agree, created districts with deviations in excess of 20%. During all this time the Legislature has demonstrated its persistent disinclination to allow one man-one vote in Arizona.

In *Reynolds v. Sims,* 377 U.S. at 585, this Court said:

> "It is enough to say now that, once a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan"

This Court went on to indicate that the principal factor justifying a court not taking such appropriate action was "an impending election." From that we infer that the District Court acted appropriately in permitting the election of 1964 to be held. But that was six years

ago and the only solace now offered is that we can petition the District Court for further relief on or after November 1, 1971, if the malapportioned Legislature has not by then done the right thing. This almost certainly means that we shall be in trial in 1972 with no more hope then than in 1970 of persuading the District Court to impose a plan that gives a full vote to all citizens.

Denial of injunctive relief by the District Court in its decree of May 19, 1970, coupled with its refusal to order a population apportionment plan, was an abuse of discretion that sorely prejudices the rights of minority groups in Arizona not only in 1970 but imminently in 1972.

THE NOTICE OF APPEAL

The decree of May 19, ,1970, was appealed by filing a Notice of Appeal on June 8, 1970, with the Clerk of the United States District Court for the District of Arizona. A copy of it was served on counsel of record for the other parties on June 18, 1970, in accordance with Rule 33, Supreme Court Rules. A copy of this Notice of Appeal is attached to this Statement as Appendix D.

Respectfully submitted,

HERBERT L. ELY, APPELLANT

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Cv. 5112-Phx.

GARY P. KLAHR, PLAINTIFF,

vs.

RICHARD DUFFIELD, INDIVIDUALLY, AND AS CHAIRMAN OF THE DEMOCRATIC PARTY OF ARIZONA, INTERVENOR-PLAINTIFF,

JACK WILLIAMS, GOVERNOR OF THE STATE OF ARIZONA, ET AL., DEFENDANTS.

OPINION AND DECISION

Opinion Filed: July 22, 1969

Before: Jertberg, Senior Circuit Judge, and District Judges Walsh and Craig

PER CURIAM

The Arizona Legislature chosen at the 1966 state elections held in conformity with the decree of this court *(Klahr v. Goddard, Governer, etc.*, 250 F. Supp. 537; 254 F. Supp. 997), in June, 1967, enacted Chapter 1, Twenty-eighth Legislature, First Special Session, (hereinafter "Chapter 1"), apportioning both the Senate and the House of Tepresentatives of Arizona. Shortly thereafter, pleadings filed herein by the parties sought a determination by the court as to the validity of Chapter 1, plaintiff and defendants seeking a ruling

that the legislation is valid, and intervenor-plaintiff contending it must be held unconstitutional under the decisions of the United States Supreme Court relating to apportionment of state legislatures. When referendum petitions were filed against Chapter 1, so that it would not become law unless and until approved by a majority of the votes cast thereon at the 1968 general election, we deferred a hearing as to the validity of Chapter 1 until the time when, if ever, it became effective.

Chapter 1 received the support of the majority of those voting upon it at the 1968 general election and, the Governor of Arizona having thereafter proclaimed it in force and effect, on January 17, 1969, we held the deferred hearing.[1] On April 7, 1969, the Supreme Court of the United States decided *Kirkpatrick, Secretary of State of Missouri, et al., v. Preisler, et al.*, 394 U.S. 526, 22 L.Ed. 2d 519, 89 S.Ct. ....., and *Wells v. Rockefeller, as Governor, et al.*, 394 U.S. 542, 22 L.Ed. 2d 535, 89 S.Ct. ..... These decisions require that we hold Chapter 1 to be unconstitutional and invalid.

Chapter 1 provides that, beginning with the Twenty-ninth Arizona Legislature, the State of Arizona is divided into seven election districts; and the election districts are subdivided into legislative districts, from each of which there will be elected one senator and two

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[1] The membership of the court at the time of the hearing comprised the late Senior Circuit Judge Walter L. Pope and District Judges Walsh and Craig. Judge Pope died on March 27, 1969. The court was reconstituted on April 3, 1969, with Senior Circuit Judge Gilbert H. Jertberg and District Judges Walsh and Craig as members.

representatives. The plan of Chapter 1 is for the entire membership of the legislature to be apportioned among the election districts on the basis of population; but Chapter 1 provides, further, that the number of legislators apportioned to each election district shall be apportioned among its legislative districts on the basis of voter registration. With respect to election districts, Chapter 1 permits until 1971 a deviation from the ideal population per district of as much as 15%;[2] and in 1971 and thereafter, a deviation from the ideal population per district of 16%, plus or minus, is allowable. With respect to legislative districts, Chapter 1 permits until 1971 a deviation from the ideal voter registration per district of as much as 40%;[3] and in 1971 and thereafter, a deviation from the ideal voter registration per district of 16%, plus or minus, is allowable.

It is quite evident that the Legislature in enacting Chapter 1 had the belief that a population variance among election districts of not more than 16%, plus or minus, from the ideal election district population satisfied the constitutional requirements for valid apportionment of such districts.[4] It is evident, too,

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[2] The most populous election district may be approximately 8.6% above the mathematical ideal and the least populous district approximately 15.1% below.

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[3] This is on the basis of voter registration figures for the 1966 General Election. The legislative district containing the greatest number of registered voters may be approximately 24.26% above the mathematical ideal and the legislative district containing the smallest number of registered voters approximately 40% below.

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[4] At the time Chapter 1 was enacted by the Legislature, the case reports and legal literature with respect to redistricting and reapportionment furnished some apparent justification for this belief.

that with respect to legislative districts the legislature assumed that a like percentage variance of registered voters among legislative districts was permissible. But *Kirkpatrick* and *Wells* hold that the establishment by a state legislature of a fixed percentage population variance which the legislature will consider *de minimis* is inconsistent with and will not satisfy the constitutional requirements that states make their Congressional districts and their state legislative districts as nearly of equal population "as is practicable".[5] *Wesberry v. Sanders,* 376 U.S. 1, 18, 11 L.Ed. 2d 481, 492, 83 S.Ct. 1691; *Reynolds v. Sims,* 377 U.S. 533, 577, 12 L.Ed. 2d 506, 536, 84 S.Ct. 1362. *Kirkpatrick* held, further, that even if the court were to assume that apportionment might be based upon eligible voter population rather than total population,[6] the districts must be as nearly of equal eligible voter population as is practicable.

Nothing presented to the court upon the hearing would permit us to hold that the Legislature could not come any closer than it did in Chapter 1 to achieve population equality among the districts from which its senators and representatives are to be elected. To the contrary, it appears plain that the Legislature assumed

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[5] The redistricting of Congressional districts found invalid in *Kirkpatrick* had resulted in maximum variations from ideal population of from plus 3.13% to minus 2.84%. In *Wells,* the variations ranged from plus 6.4888% to minus 6.608%.

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[6] Though the court did make this assumption, it expressed the caveat that there may be a question as to whether apportionment on a basis other than total population can ever be permissable. 394 U.S. 534. In Arizona, the evidence suggests rather strongly that apportionment on the basis of registered voters would result in under-representation of the people in Apache and Navajo Counties (R.T., pp. 187, et seq.).

that so long as its reapportionment plan kept all election district deviations from ideal population within 16%, plus or minus, the constitutional tests for a valid apportionment were met. No evidence was presented which would justify either the population variance among the election districts or the registered voter variance among the legislative districts. We hold, therefore, that Chapter 1 is invalid for failing to meet the constitutional requirement of equal representation for equal numbers of people as nearly as is practicable.

Having held that Chapter 1 is invalid, it results that the decree and supplemental decrees heretofore entered in this case redistricting the Congressional Districts of Arizona and reapportioning both Houses of the Arizona Legislature govern primary, general, and special elections which may be held hereafter until the Legislature shall have adopted different, valid, and effective plans for redistricting and reapportionment, or until the further order of the court. However, while agreeing that Chapter 1 is invalid, plaintiff Klahr points out that the population variances among the Arizona Congressional districts, as established by this court's decree, are inconsistent with the rule established in *Kirkpatrick*,[7] and he asks that we forthwith order defendants to conduct the 1970 and all subsequent primary and general elections for the offices of Representatives in Congress, State Senator, and State Representative in a manner whereby the candidates for such offices will "run at large" within the State of Arizona. Since we are cognizant of the fact that re-

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[7] Apparently, population variances in reapportionments accomplished by court decree on an emergency basis may be permissible when the same variances would invalidate a legislative reapportionment. *Kirkpatrick*, 394 U.S. 532, fn. 2.

districting and reapportioning are the constitutional duty of the Legislature and not that of this court, we decline to enter such an order at this time. *Kirkpatrick* and *Wells* have now expounded what is required of a legislature if its redistricting and reapportioning work is to be constitutionally acceptable. There is ample time prior to the date that the machinery for conducting the 1970 elections must be set up for the Arizona Legislature to meet its obligation. If it fails, plaintiff may renew his request for relief, since the same will be within our continuing jurisdiction.

DATED: July 22, 1969.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civil 5112 Phoenix

MEMORANDUM OPINION, FINDINGS OF FACT,
AND CONCLUSIONS OF LAW
May 19, 1970

GARY PETER KLAHR, PLAINTIFF,

HERBERT L. ELY, INDIVIDUALLY AND AS CHAIRMAN OF THE DEMOCRATIC PATY OF ARIZONA, INTERVENOR-PLAINTIFF,

vs.

JACK WILLIAMS, GOVERNOR OF THE STATE OF ARIZONA, ET AL., DEFENDANTS.

Before: Jertberg, Senior Circuit Judge, and District Judges Walsh and Craig

PER CURIAM

In early 1966, following the decisions of the Supreme Court of the United States in *Wesberry v. Sanders,* 376 U.S. 1, and *Reynolds v. Sims,* 377 U.S. 533, this court in this cause adjudged void and unconstitutional the Arizona statute (§ 16-727, A.R.S., 1956), districting the state for the election of representatives in the United States Congress and the constitutional and

statutory provisions of the state then in effect with respect to the membership and apportionment of the Arizona Legislature. Finding, in addition, that the Legislature, although having ample opportunity, had failed to enact a valid provision for congressional redistricting and a valid reapportionment of its own membership, the court ordered into effect a redistricting of congressional districts and a reapportionment of both houses of the Arizona Legislature for the 1966 primary and general elections and for such further elections as might follow until the Legislature itself adopted different and valid plans for districting and reapportionment. *Klahr v. Goddard,* 250 F. Supp. 537; 254 F. Supp. 997.

In June, 1967, the Arizona Legislature chosen at the first elections held in conformity with this court's decree enacted legislation apportioning itself. However, when the legislation came before us in 1969, we held that the then newly rendered decisions of the Supreme Court in *Kirkpatrick v. Preisler,* 394 U.S. 526, and *Wells v. Rockefeller,* 394 U.S. 542, required that we hold the legislation invalid. *Klahr v. Williams,* 303 F. Supp. 224.

In January, 1970, the Legislature enacted Chapter 1, Twenty-Ninth Legislature, State of Arizona, First Special Session, (hereinafter "Chapter 1"), ,a new effort by the Legislature to apportion itself and to district the State of Arizona for the election of congressional representatives. Chapter 1 was approved by the Governor on January 22, ,1970, and became effective on April 20, 1970. Following enactment of Chapter 1, defendants petitioned us for a hearing and asked that we determine that Chapter 1 accomplished a valid redistricting of the state's congressional districts and

a valid reapportionment of the Arizona Legislature. A hearing was held on April 16 and 17, 1970, in which all parties participated and were heard.

Plaintiff, Klahr, does not question the validity of Chapter 1 insofar as it apportions the Arizona Legislature but he contends that with respect to congressional redistricting the Legislature has not devised a constitutionally valid plan because it was possible for the Legislature to have made the three congressional districts more nearly equal in population than it did in Chapter 1. Plaintiff asks an order of this court that, until a valid plan of redistricting is enacted by the Legislature, the defendants conduct the 1970 and all subsequent primary and general elections for Members of the United States House of Representatives from Arizona in a manner whereby each person seeking such office will run at large within the State of Arizona.

Intervenor-plaintiff, Ely, challenges the constitutionality of Chapter 1 insofar as it provides for apportionment of the Legislature, contending that the legislative districts established by Chapter 1 were determined upon the erroneous assumption that population can validly be calculated from voter registration figures. He contends that, if Chapter 1 becomes operative, the result will be serious under-representation in the Legislature of certain areas of the state.

Intervenor-plaintiff has submitted to the court, and asks the court to place into effect, a plan devised by his counsel for apportionment of the Legislature on the basis of 1968 projections of 1960 and 1965 Arizona censuses. The projections or estimates of population are prepared by the staff of the Arizona Employment Security Commission, using procedures prescribed by the United States Bureau of the Census. The heart of

the plan sponsored by intervenor-plaintiff is the building of legislative districts from census divisions, enumeration districts, and tracts. At the hearing, intervenor-plaintiff introduced testimony consisting, *inter alia,* of population estimates broken down by census divisions, enumeration districts, and tracts; maps of Arizona county census divisions, enumeration districts, and tracts; boundary descriptions of the census divisions existing within Arizona counties; and vari-colored maps showing thirty legislative districts as proposed by intervenor-plaintiff. From what was presented to us, it is evident that counsel for intervenor-plaintiff expended a great deal of time, effort, and skill in preparing his plan. We can say that counsel was on the right track and that very likely a valid reapportionment plan could result from what counsel has in mind. However, we must hold that the plan is simply not complete and we could not adopt it. No written legal descriptions of the boundaries of the proposed legislative districts have been furnished to us, and from our study of the testimony and exhibits we are not certain that such descriptions can be derived from the census district and tract boundaries. Admittedly, there are population errors in a number of districts delineated in the plan as filed, and we are not certain that they would be cured by adjustments which counsel suggested in the course of the trial could be made. At all events, before intervenor-plaintiff's plan could be placed into operation practically every election precinct in the State of Arizona would have to be reestablished, since the plan disregards election precinct boundaries entirely. The 1970 election process begins in Arizona in early June and we are certain that, even if we had the complete cooperation of the election officials of the fourteen Arizona counties, the necessary

reconstruction of the election precincts could not be accomplished in time.

Before proceeding to a consideration of Chapter 1, we feel it is in order to examine and discuss the redistricting and reapportionment plan which this court adopted in 1966 and which has been in effect from that date up to the present. When this court entered its decree, it was done in the belief that rather substantial population deviations among congressional districts and state legislative districts were constitutionally permissible and that, with respect to sub-districts of state legislative districts, voter registration figures might be constitutionally substituted for population figures. Later decisions of the United States Supreme Court, however, have established that population deviations deemed to be constitutional in our 1966 decree would now exceed constitutional standards, *Kirkpatricy v. Preisler,* supra; *Wells v. Rockefeller,* supra; and it is clear now, also, that apportionment of members of a legislature on the basis of voter registration satisfies the Equal Protection Clause only if it produces a distribution of legislators not substantially different from that which would have resulted had a permissible population basis been used. *Burns v. Richardson,* 384 U.S. 73, 93.

Under our 1966 decree, the congressional districts were established on the basis of 1960 population figures and they contain deviations from ideal district populations ranging from plus 7.8% to minus 6.3%, or a total deviation range of 14.1%. The decree also reapportioned the Arizona Legislature on the basis of 1960 population figures, setting up legislative districts with deviations from the ideal district population ranging from plus 15.5% to minus 6.5%, a deviation range of

22%. Further, the decree authorized and approved legislative sub-districts within Maricopa and Pima Counties which were proposed by the parties and were drawn upon the basis of 1964 voter registrations in the decree permits deviations from the ideal sub-district two counties. On such voter registration basis, the registration ranging from plus 5.66% to minus 8.87%, or a total range of 14.53%. It appears now that if the sub-districts are tested on the basis of their 1968 voter registration figures, the deviations from the ideal sub-district registration would range from minus 22.12% to plus 24.97%, or an expanse of 47.09%.

In light of the foregoing, we must conclude that, tested by *Kirkpatrick, Wells,* and *Burns,* supra, the present congressional districting and state legislative apportionment plan does not meet constitutional standards.

Turning now to Chapter 1, the Act provides that, commencing with the 30th Legislature, the Arizona Senate shall consist of thirty members and the Arizona House of Representatives shall consist of sixty members. For the 30th Legislature, and until changed by the Legislature, Chapter 1 provides that there will exist thirty legislative districts, each of which shall elect one senator and two representatives; and the legislative districts are described in Chapter 1 by numbered election precincts, or parts of such precincts, or by county names, or by both, as established on January 1, 1970. With respect to congressional districts, Chapter 1 provides that District No. 1 is comprised of specified legislative districts or parts of legislative districts within Maricopa County; District No. 2 is comprised of five Arizona Counties, viz: Cochise, Pima, Pinal, Santa Cruz, and Yuma; and District No.

3 is comprised of eight Arizona Counties ,viz: Apache, Coconino, Gila, Graham, Greelee, Mohave, Navajo, and Yavapai, plus the part of Maricopa County not included within District No. 1.

The evidence before us discloses that the legislattive districts which the Arizona Legislature adopted in Chapter 1 were produced with the aid of computers. According to the testimony of the persons in charge of the computer process, criteria provided to them by certain members of the Legislature were built into the computer program which produced the legislative districts. From the testimony, the criteria, in the order of their importance, were: first, minimum population deviations from the district norm; second, legislator incumbency; third, compactness of the district; fourth, party strength in the district.

With respect to the population factor utilized in programming the computer, no attempt was made to use recent population estimates but the programmers devised a formula which is described as "converting 1968 voter registration to 1960 census on a proportionate basis". Use of the conversion formula seems to have been deemed proper because this court's 1966 decree permitted and provided for legislative subdistricts in Maricopa and Pima Counties drawn upon the basis of 1964 voter registration in those counties, rather than upon population. The population factor in each of the election precincts comprising part of a legislative district was obtained by instructing the computer to take the 1968 voter registration for the precinct and divide it by the 1968 voter registration for the county in which the precinct was located, thereby obtaining the percentage of registered voters by the county residing within the precinct. The computer

was then directed to multiply that percentage figure by the 1960 census for the county in which the precinct was located, thereby obtaining the population factor for the precinct. It is obvious, of course, that although the 1960 population enters into the conversion formula, the population figures produced for the respective precincts comprising the legislative districts do not truly represent the population within those precincts in either 1960 or 1968.

When translated, the criterion "legislator incumbency" is but a ground rule utilized in an effort to insure that no more than one incumbent senator and two incumbent representatives will reside within any legislative district produced by the computer.

With respect to the "party strength" criterion, it apparently operated thusly: If, in building a legislative district from precincts, the precincts first selected have a history of voting heavily for one particular political party, then in selecting additional precincts for the district preference is to be given to those precincts which have a like history. The theory, it seems, is that legislative districts should be either heavily Democratic or heavily Republican, and not closely balanced on party lines.

The legislative districts produced with the aid of the computer do have a remarkably small deviation from the ideal or the norm, ranging between one district with a plus .81% deviation and a district with a minus .99% deviation, or a total deviation range of 1.8%; and the deviations among the congressional districts established in Chapter 1 range from plus 1.47% to minus 1.41%. We cannot, however, hold the districting and apportionment constitutionally valid. As pointed out above, the figures produced by the con-

rsion formula as population are not truly population gures and we cannot find that the distribution of embers of Congress or legislators provided by Chapr 1 is not substantially different from that which ould have resulted had a permissible population basis en used. Further, the incumbency factor has no place any reapportionment or redistricting. "The goal reapportionment . . . is just representation of the eople, not the protection of incumbents in a legistive body." *League of Nebraska Municipalities v. arsh,* 242 F. Supp, 357, 360. In addition, we disapove as inapposite the consideration of party strength a factor in reapportionment or redistricting.

Having found wanting in constitutionality the disicting and apportionment plans of both the court and e Legislature, we face the questions of what can and ould be done by the court. The 1970 elections are ose at hand. Nomination petitions are likely circulatg at the present time; nomination papers and petions may be filed as early as June 10, and they must be led not later than July 10. As one of the experienced lection officials stated during the hearing, election recincts and all other arrangements for the elections hould be set up by June 1. The usual practice of llowing time for the Legislature to act, failing which he court will act, is out of the question. Further, beause of the imminency of the Arizona elective process, udicial districting and apportionment, even if possible t all, cannot be accomplished without the court's udicial alteration of the statutory plan and scheduling or holding primary elections, a course which would nvolve serious risk of confusion and chaos.

A decree directing that in this year's elections the Arizona Members of Congress and the members of the

Legislature be elected "at large" is a possible solution; but the ordeal involved in conducting elections in which ninety seats in the Legislature are in contest is so obvious and grave that we could justify requiring it only if we were convinced that the Legislature's failure to enact a valid and effective plan for districting and apportionment was deliberate and inexcusable. However, it is not our belief that the failure to have presently for Arizona a valid and effective plan for redistricting and reapportionment is the result of obduracy on the part of the present Legislature. In truth, it appears that the lack of an official state census since 1960, accompanied by the large increase in population since 1960, has understandably left the Legislature uncertain as to how to arrive at a valid population basis for reapportionment and redistricting.

Presently, the decennial census is being taken in Arizona and we are informed that the detailed figures developed therefrom will be available in the summer of 1971. It does not appear reasonable to us to conclude ture into judicial districting and apportionment or an that we are required to select either a precipitate ven- "at large" election, solely for the last elections that will be held before the 1970 census figures are available. We think that we may properly either order the 1970 elections of Arizona Members of Congress and members of the Legislature to be heled in accordance with our 1966 decree or adopt the provisions of Chapter 1 as a temporary plan of redistricting and reapportionment to be in effect only for the 1970 elections.

We have studied both our decree and Chapter 1, and we have concluded that, of the two, Chapter 1 more nearly conforms with the mandate "one man, one vote", which derives from the Equal Protection Clause.

Consequently, we will adopt the provisions of Chapter 1 to govern the elections of Arizona Members of Congress and members of the Legislature for the 1970 elections and enter a decree accordingly.

As mentioned earlier, plaintiff has asked that we order "at large" elections of Members of Congress this year. His request is based upon the fact that there is evidence before us that the Legislature could have reduced the range of deviations from the ideal among congressional districts below the 2.9% which is produced by Chapter 1. In arguing plaintiff's request, counsel frankly stated that the idea of mandated "at large" elections was repugnant to him, as it is to us. Since the deviation range is relatively quite small, and since we are dealing with the last congressional elections before official census figures will be available, we deny the request notwithstanding "at large" congressional elections would not present the grave problems and difficulties inherent in "at large" elections of members of the Legislature.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. Civil 5112 Phoenix

THIRD SUPPLEMENTAL DECREE

GARY PETER KLAHR, PLAINTIFF,

HERBERT L. ELY, INDIVIDUALLY AND AS CHAIRMAN OF THE DEMOCRATIC PARTY OF ARIZONA, INTERVENOR-PLAINTIFF,

vs.

JACK WILLIAMS, GOVERNOR OF THE STATE OF ARIZONA, ET AL., DEFENDANTS.

Opinion Filed: May 19, 1970

The court having this day filed herein its Memorandum Opinion and Findings of Fact and Conclusions of Law, and good cause appearing therefor,

IT IS ORDERED, ADJUDGED, AND DECREED:

I

The reapportionment plan and the redistricting plan set forth in the Findings, Conclusions, and Decree entered in this cause on February 2, 1966, though deemed constitutionally valid when adopted, are presently unconstitutional; and the congressional districts, legislative districts, and legislative sub-districts set forth in said Findings, Conclusions, and Decree are presently unconstitutional.

II

Chapter I, Twenty-Ninth Legislature, State of Arizona, First Special Session (hereinafter "Chapter 1"), does not provide a constitutionally valid districting of the State of Arizona for the election of Arizona Members of the House of Tepresentatives nor a constitutionally valid apportionment of the members of the Arizona Legislature; but because of the imminence of the 1970 Arizona elections, the court adopts for said elections the provisions of Chapter 1 to govern the selection of Arizona Members of Congress and members of the Legislature.

III

The Thirtieth Legislature, State of Arizona, shall consist of thirty (30) members of the senate and sixty (60) members of the house of representatives. The legislative districts of the Thirtieth Legislature shall be as set forth and described in Chaper 1, and at the Arizona elections held in 1970, one (1) senator and two (2) representatives shall be elected from each legislative district.

IV

The congressional districts from which the Members to the House of Representatives from Arizona shall be selected in 1970, to serve in the 92nd Congress of the United States, shall be as set out in Chapter 1.

V

The respective boards of supervisors of Arizona are authorized, until June 1, 1970, to adjust the boundaries of precincts within a legislative district in order to provide convenient polling places for voters.

VI

Except to the extent they are inconsistent herewith, the terms and provisions of the decree enterd herein on February 2, 1966, and the terms and provisions of the supplemental decrees entered on March 14, 1966, and December 5, 1966, respectively, shall remain in force and effect until the further order of this court.

VII

The court, having been advised that detailed population figures for the State of Arizona will be available from the official 1970 census by the summer of 1971, assumes that the Arizona Legislature will by November 1, 1971, enact a valid plan of reapportionment for both houses of the Arizona Legislature and a valid plan of redistricting the congressional districts of Arizona. Upon failure of the Legislature so to do, any party to this action may apply to the court for appropriate relief.

VIII

This court retains jurisdiction of this cause to fully carry into effect the foregoing.

DATED: May 19, 1970.

GILBERT H. JERTBERG
United States Circuit Judge

JAMES A. WALSH
United States District Judge

WALTER E. CRAIG
United States District Judge

APPENDIX C

CHAPTER 1, HOUSE BILL NO. 1, 29TH LEGISLATURE, FIRST SPECIAL SESSION, REPEALED TITLE 16, CHAPTER 11, ARIZONA REVISED STATUTES AND ADDED A NEW TITLE 16, CHAPTER 11, CONSISTING OF SECTIONS 16-1401, 16-1402 AND 16-1403. THE FIRST TWO SECTIONS, DEALING WITH LEGISLATIVE REAPPORTIONMENT, ARE AS FOLLOWS:

CHAPTER 11

MEMBERSHIP AND APPORTIONMENT OF LEGISLATURE AND ESTABLISHMENT OF CONGRESSIONAL DISTRICTS

ARTICLE 1. IN GENERAL

16-1401. MEMBERSHIP OF LEGISLATURE

Commencing with the thirtieth legislature, the senate shall consist of thirty members and the house of represenatives of sixty members.

16-1402. LEGISLATIVE DISTRICTS

A. For the thirtieth legislature and until changed by the legislature, the legislative districts shall be established as provided in this section.

B. The legislative districts shall consist of geographic areas, and one senator and two representatives shall be elected from each slch district. These areas, described by the precinct or a part of such precinct as herein described, or county names or numbers, or both, as established on January 1, 1970, are set forth as follows:

DISTRICTS	DESCRIPTION
1	Maricopa county Aguila, New River, Wickenburg No. 1, Wickenburg No. 2. Mohave county Alamo, Bullhead, Chloride, Country Club, Davis Dam, Dolon Springs, Hackberry, Hilltop, ,Hualapai, North Kingman, South Kingman, East Kingman No. 1, East Kingman No. 2, West Kingman, Lake Havasu, Logasville, Mohave Valley, Oatman, Peach Springs, Riviera, Topock, Wikieup, Yucca. Yavapai county Bagdad, Beaver Creek, Bumblebee, Camp Verde, Camp Wood, Canyon, Castle Hot Springs, Cherry Creek, Childs, Chino Valley, Clarkdale, Cleator, Congress, Constellation, Cottonwood No. 1, Cottonwood No. 2, Crown King, Groom Creek, Hillside, Humbolt, Jerome, Kirkland, Mayer, Miller Valley East, Miller Valley West, Oak Creek, Prescott Northeast, Prescott Northwest, South Prescott Southwest, Red Rock, Tin-Prescott North, Prescott West, Prescott con, Skull Valley, Wagoner, Walnut Creek, Walnut Grove, Whipple, Yarnell. Yuma county Bouse, Parker No. 1, Parker No. 2, Wenden.
2	All of Coconino county. Mohave county Cane Beds, Colorado City, Littlefield, Moccasin, Mount Trumbull

DISTRICTS	DESCRIPTION
	Yavapai county Ash Fork, Seligman
3	Apache county Chinle, Teec Nos Pos
	Gila county Globe No. 9, Globe No. 10, Gisela, Payson No. 1, Payson No. 2,, Pine, Young.
	Graham county Bylas No. 13 Winslow No. 1, Winslow No. 2, Winslow No. 3, Winslow No. 4, Winslow No. 5, Winslow No. 6 Winslow No. 7, Winslow No. 8, Oraibi, Polacca, Tees To, Toreva, Holbrook No. 1, Holbrook No. 2, Holbrook No. 3, Holbrook No. 4, Indian Wells, Joseph City, Kayenta, Keams Canyon, Pinon, Woodruff, Snowflake No. 1, Snowflake No. 2, Taylor, Showlow No. 1, Showlow No. 2, Whiteriver, Cibecue, Heber, Overgaard, Clay Springs, Pinedale, Linden,
4	Apache county Alpine, Concho, Eager, Ft. Defiance, Ganado, Greer, Lukachukai, Lupton, McNary, Nutrioso, Puerco, Springerville, St. Johns, St. Michaels, Vernon, Wide Ruins,
	Graham county Solomon No. 1
	All of Greenlee county
	Navajo county Pinetop, Lakeside

DISTRICTS	DESCRIPTION
5	Maricopa county Gila Bend Yuma county Yuma No. 2, Yuma No. 3, Yuma No. 4, Yuma No. 5, Yuma No. 6, Yuma No. 7, Yuma No. 8, Yuma No. 9, Yuma No. 10, Yuma No. 11, Yuma No. 12, Yuma No. 13, Yuma No. 14, Yuma No. 15, Yuma No. 16, Yuma No. 17, Yuma No. 18, Yuma No. 19, Yuma No. 20, Yuma No. 21, Yuma No. 22, Cibola, Crane No. 1, Crane No. 2, Eehrenberg, Gadsden, Hyder, Laguna, Mohawk, Parker No. 3, Quartzite, Roll, Rood, Salome, Somerton No. 1, Somerton No. 2, Vicksburg, Wellton
6	Maricopa county Desert Baths, Dreamland, Jefferson, Oasis, Velda Rose
6	Pinal county Casa Grande No. 3, Queen Creek No. 4, Casa Grande No. 7, Eloy No. 9, Coolidge No. 11, Maricopa No. 13, Coolidge No. 15, Sacaton No. 16, Stanfield No. 18, Picacho No. 19, Apache Junction No. 20, Eloy No. 21, Casa Grande No. 22, Casa Grande No. 23, Coolidge No. 24, Coolidge No. 26, Casa Grande No. 31, Casa Grande No. 32, Eloy No. 33, Apache Junction No. 35, Arizona City No. 38
7	Gila county Globe No. 1, Globe No. 2, Globe No. 3, Globe No. 4, Globe No. 5, Globe No. 6, Globe No. 7, Globe No. 8, Globe No. 11, Miami No. 1,

ISTRICTS	DESCRIPTION
	Miami No. 3, Miami No. 4, Miami No. 5, Claypool No. 1, Claypool No. 2, Claypool No. 3, Central Heights, Hayden No. 1, Basin
	Winkleman, Christmas, Roosevelt, Tonto
	Pinal county
	Florence No. 1, Superior No. 2, Superior No. 6, Oracle No. 8, Red Rock No. 10, Ray No. 12,, Florence No. 14, Kearney No. 17, San Manuel No. 25, San Manuel No. 27, Kearney No. 28, Florence No. 34, Apache Junction No. 36, Superior No. 37, Superior No. 41, Superior No. 42.
8	Cochise county
	Benson No. 1, Benson No. 2, Bowie, Cochise, Douglas No. 1, Douglas No. 2, Douglas No. 3, Douglas No. 4, Douglas No. 5, Douglas No. 6, Douglas No. 7, Douglas No. 8, Douglas No. 9, Douglas No. 10, Dragoon, El Dorado, Lusk, McNeal, Paradise, Pearce, Pirtleville, Pomerene, San Simon, Tombstone, Webb, Whiteriver, Willcox No. 1, Willcox No. 2, Willcox No. 3.
	Graham county
	Safford No. 2, Safford No. 3, Layton No. 4, Layton No. 5, Thatcher No. 6, Thatcher No. 7, Central No. 8, Pima No. 9, Eden No. 10, Ft. Thomas No. 11, Geronimo No. 12, Klondyke No. 14, Bonita No. 15.
	Pinal county
	Mammoth No. 5, Feldman No. 39.
9	Cochise county
	Ash, Bisbee No. 1, Bisbee No. 2, Bisbee No.

DISTRICTS	DESCRIPTION
	3, Bisbee No. 4, Buena No. 1, Buena No. 2, Buena No. 3, Buena No. 4, Central Bridge, Don Luis, Hereford, Huachuca, Lowel No. 1, Lowell No. 2, Lowell No. 3, Naco, San Tafael, St. David, Darren No. 1, Warren No. 2, Warren No. 3, Warren No. 4
	Pima county No. 29, No. 30, No. 39, No. 43, No. 131
	All of Santa Cruz county
10	Pima county No. 1, No. 2, No. 3, No. 4, No. 5, No. 10, No. 13, No. 27, No. 34, No. 35, No. 36, No. 37, No. 38, No. 55, No. 57, No. 59, No. 60, No. 61, No. 63, No. 65, No. 104, No. 107, No. 108, No. 109, No. 112, No. 128, No. 130, No. 135. Yuma county Aztec.
11	Pima county No. 6, No. 7, No. 8, No. 9, No. 11 No. 12, No. 14, No. 15, No. 16, No. 17, No. 18, No. 19, No. 20, No. 21, No. 22, No. 28, No. 41, No. 46, No. 58, No. 62, No. 64, No. 66, No. 78, No. 105, No. 110, No. 111, No. 139, No. 143.
12	Pima county No. 33, No. 40, No. 44, No. 67, No. 68, No. 69, No. 70, No. 75, No. 76, No. 97, No. 99, No. 100, No. 101, No. 102, No. 103, No. 118, No. 119, No. 122, No. 129, No. 132, No. 134, No. 138, No. 146.
13	Pima county No. 23, No. 24, No. 31, No. 45, No. 47, No. 48, No. 49, No. 50, No. 81, No. 82, No. 84, No. 85,

DISTRICTS	DESCRIPTION
	No. 86, No. 87, No. 88, No. 106, No. 113, No. 125, No. 136, No. 137.
14	Pima county No. 25, No. 26, No. 32, No. 51, No. 52, No. 53, No. 54, No. 71, No. 80, No. 89, No. 90, No. 91, No. 95, No. 96, No. 98, No. 114, No. 116, No. 120, No. 124, No. 126
15	Pima county No. 42, No. 56, No. 72, No. 73, No. 74, No. 77, No. 78, No. 83, No. 92, No. 93, No. 94, No. 115, No. 117, No. 121, No. 123, No. 127, No. 133, No. 140, No. 141, No. 142, No. 144, No. 145
16	Maricopa county Arlington, Buckeye No. 1, Buckeye No. 2, Dysart, Earll, Glendale No. 1, Glendale No. 2, Glendale No. 3, Glendale No. 4, Glendale No. 6, Glendale No. 7, Glendale No. 8, Highland, Harquahala, Holiday Gardens, Holiday Park, ndianola, Lexington, Liberty, Litchfield, Morristown, Orme, Salem, Starlight, St. Christopher, Sun Bowl, Sunset, Tonopah
17	Maricopa county Adobe, Agua Fria, Altadena, Angell, Cactus, Campo Bello, Caron, Cave Creek, Century, Deer Valley, Desert Hills, Emerald, Gold Dust, Greenway, La Jolla, Marinette, Moon Valley, Peoria, Sahuaro, Shaw Butte, Shea, Sun City, Surrey, Trinity, Voltaire, Youngtown No. 1,, Youngtown No. 2, Yucca, Webb
18	Maricopa county Alta Vista, Ambassador, Augusta, Barce-

DISTRICTS	DESCRIPTION
	Iona, Belmont, Catalina, Cholla, Cortez, Flynn, Gardenia, Granada-All that portion of Granada precinct east of 27th Avenue. Golden, Harmont, Keim, Lynhaven - All that portion of Lynhaven precinct east of 27th Avenue. Manzanita, Maryland, Montebello, Myrtle, Northview, Roma, Simpson, St. Simon, Sungold, Washington, Westwood - all that portion of Luke precinct east of 27th Avenue.
19	Maricopa county Desert Cove, Desert View, Diana, El Domingo, Glenn, Hatcher, Lupine, Marlette, McLellan, M dows, Mountain View, Nile, Orangewood, Royal, Palm, Solano, Sunny High, Sunnyslope, Wagon Wheel, Dreamy Draw - all that portion of Dreamy Draw lying west of 16th street and 16th street extended, Hayward - all except that portion of Hayward lying south of Northern and east of 7th Street. Hazelwood - all that portion of Hazelwood lying west of 7th Avenue, All that portion of Simis lying west of 7th street. Grandview - all that portion of Grandview lying east of 15th avenue. Westminster - all that portion of Westminster lying east of 15th avenue.
20	Maricopa county Biltmore, Cudia, Joshua, Kiva, Mockingbird, Brentwood, Camelback High, Glenrosa, Harvard, Kachina, LaFayette, Monte Vista, Olivette, Squaw Peak, St. Barnabas, St. George, Suncrest, Ventura, Yale Zuni

CTS DESCRIPTION

- all that portion of Geronimo lying west of 44th street.

Maricopa county
Apache, Arcadia, Buckhorn, Chaparral, Honda, Hualapai, Ingleside, Maricopa, McDonald, Mohave, Navajo, Paiute, Paradise, Picadilly, Pima, Pueblo, Can Carlos, Scottsdale High, Scottsdale West, Yuma, Orange, Hopi, Kaibab.

Maricopa county
Glendale No. 5, Glendale No. 9, Glendale No. 10, Alhambra, Andalucia, Cordova, Crittendon, Downs, Long, Maryvale High, Medlock, Mulberry, Ocotillo, Sevilla, St. Vincent, Valencia, West High, Whitton, Messiah, all that portion of Luke lying west of 27th Avenue, all that portion of Granada lying West of 27 avenue, all that portion of Lynhaven lying west of 27th avenue.

Maricopa county
Avalon, Bethany, Central High, Citrus, Claremont, Desert Park, Lamar, Lawrence, Madison No. 1, Madison No. 2, Madison No. 3, Madison Park, Mount Calvary, Osborn, Plaza, Rancho, Rose Lane, Rovey, St. Francis, St. Thomas, all that portion of Dreamy Draw lying east of 16th street and 16th street extended, all that portion of Hayward lying east of 7th street and south of Northern avenue, all that portion of Simis lying east of 7th street.

Maricopa county
Brill, Capitol, Carnation, Clarendon, Col-

DISTRICTS	DESCRIPTION
	lege, Emerson, Encanto, Flower, Franklin, Kenilworth, Los Olivos, McKinley, Mitchell, Monterey, North High, Palmcroft, St. Gregory, Turney, Westview, Willetta, Wilshire, YMCA, Hazelwood - All that portion of Hazelwood precinct lying east of 7th Avenue, Grandview - all that portion of Grandview lying west of 15th Avenue, Westminster lying west of 15th Avenue.
25	Maricopa county Balsz, Belleview, Cavalier, Creighton, Crockett, East High, Edgemont, Fairmount, Garfield, Griffith, Holly, Hunt, Loma Linda, Longview, Machan, Palm, Papago, St. Agnes, Whittier, Windsor, All that portion of King lying east of 28th Street.
26	Maricopa county Cochise, Coronado, Hohokam, Oak Park, Salt River, St. Daniel, Supai, Tempe No. 1, Tempe No. 2, Tempe No. 3, Tempe No. 4, Tempe No. 13, Tempe No. 14, Tempe No. 15, Tempe No. 22, Tempe No. 23, Tonalea, Tonto, YaYvapai, Barnes, Gardens, All that portion of Geronimo lying east of 44th Street.
27	Maricopa county Avondale, Brown, Butler, Cartwright, Cash, Cashion, Cheery Lynn, Coe, Durango, Gila Crossing, Goodyear, Grand Avenue, Harrison, Hayden High, Isaac, Jackson, Latham, Laveen, Madrid, Murphy, Riverside, Sullivan, Sutton, Tolleson, Zito.

ISTRICTS	DESCRIPTION
28	Maricopa county Bethune, Broadway, Court, Dunbar, Edison, Hermosa, Hialeah, Hope, Julian, Lincoln, Longfellow, Lowell, Monroe, Okemah, Palmdale, Parkview, Rio Vista, Sierra Vista, Skiff, Sky Harbor, South Mountain High, Southminister, Sunland, Wilson, All that portion of King lying west of 28th Street.
29	Maricopa county Chandler No. 1, Chandler No. 2, Chandler No. 3, Chandler No. 4, Chandler No. 5, Gilbert, Guadalupe, Higley, Kyrene, Queen Creek, Tempe No. 5, Tempe No. 6, Tempe No. 7, Tempe No. 8, Tempe No. 9, Tempe No. 10, Tempe No. 11, Tempe No. 12, Tempe No. 16, Tempe No. 17, Tempe No. 18, Tempe No. 19, Tempe No. 20, Tempe No. 21, Tempe No. 24, Barr, Roosevelt, Thunderbird, Valley View.
30	Maricopa county Lehi, Mesa No. 1, Mesa No. 2, Mesa No. 3, Mesa No. 4, Mesa No. 5, Mesa No. 6, Mesa No. 7, Mesa No. 8, Mesa No. 9, Mesa No. 10, Mesa No. 11, Mesa No. 12, Mesa No. 13, Mesa No. 14, Mesa No. 15, Mesa No. 16, Mesa No. 17, Mesa No. 18, Mesa No. 19, Mesa No. 20, Mesa No. 21.



APPENDIX D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

No. Civ. 5112 Phx.

NOTICE OF APPEAL

GARY PETER KLAHR, PLAINTIFF,

HERBERT L. ELY, INDIVIDUALLY AND AS CHAIRMAN OF THE DEMOCRATIC PARTY OF ARIZONA, INTERVENOR-PLAINTIFF,

vs.

JACK WILLIAMS, GOVERNOR OF THE STATE OF ARIZONA, ET AL., DFENDANTS.

Please take notice that Intervenor-Plaintiff, HERBERT L. ELY, appeals to the Supreme Court of the Third Supplemental Decree entered in this case and filed on May 19, 1970. The statute under which this appeal is taken is the Act of June 25, 1948, ch. 646, 62 Stat. 928, 28 U.S.C.A. 1253.

Dated June 18, 1970.

PHILIP J. SHEA
for Intervenor-Plaintiff

PROOF OF SERVICE

STATE OF ARIZONA)
) ss.
County of Maricopa)

PHILLIP J. SHEA, being duly sworn, deposes and says that he is the attorney for Intervenor-Plaintiff Herbert L. Ely; that at 9:30 A.M., on June 18, 1970, he served copies of this Notice of Appeal in accordance with the requirements of Rule 33, paragraph 1, of Supreme Court Rules, by depositing them in a mail box with first class postage prepaid, addressed to the following counsel of record:

Att: JOHN M. MCGOWAN, *Special Assistant*
HON. GARY K. NELSON, *Attorney General*
159 Capitol Building
Phoenix, Arizona 85007

SIMON and JEKEL
Att: J. STEPHEN SIMON
600 N. Old Scottsdale Road
Scottsdale, Arizona 85251